Office-Supreme Court, U.S.
FILED
FEB 11 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1023

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

SHIRLEY M. HUFSTEDLER,
SECRETARY OF EDUCATION, ET AL.
Petitioner,

v.

DOUGHERTY COUNTY SCHOOL SYSTEM, ACTING THROUGH
THE DOUGHERTY COUNTY BOARD OF EDUCATION
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

C. RICHARD LANGLEY
PERRY, WALTERS,
LIPPITT & CUSTER
409 N. Jackson Street
Post Office Box 527
Albany, Georgia 31703
(912) 432-7438

Attorneys for Respondent.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

TABLE OF CONTENTS

	PAGE
ARGUMENT	2
I. THIS COURT HAS DENIED CERTIORARI IN CASES PRESENTING THE SAME ISSUE	2
II. THERE IS NO SPLIT OF AUTHORITY BETWEEN CIRCUIT COURTS IN CASES THAT INVOLVE ACTUAL CONTROVERSY	2
CONCLUSION	3

TABLE OF AUTHORITIES

CASES:	PAGE
Islesboro School Committee v. *Califano*, 593 F.2d 424 (1st Cir.), *cert. denied*, 444 U.S. 972 (1979)	2
Junior College District of St. Louis v. *Califano*, 597 F.2d 119 (8th Cir.), *cert. denied*, 444 U.S. 972 (1979)	2
North Haven Board of Education v. *Hufstedler*, Nos. 79-6136, 79-6247 and 79-7747 (2d Cir. July 24, 1980) Supreme Court No. 80-986	2, 3
Romeo Community Schools v. *HEW*, 600 F.2d 581 (6th Cir.), *cert. denied*, 444 U.S. 972 (1979)	2
Seattle University v. *HEW*, No. 77-631S (W.D. Wash. Jan. 3, 1978), aff'd, 621 F.2d 992, petition for cert. granted, No. 80-493 (Dec. 1, 1980)	2, 3
OTHER AUTHORITY:	
Supreme Court Rule 19	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1023

SHIRLEY M. HUFSTEDLER,
SECRETARY OF EDUCATION, ET AL.
Petitioner,

v.

DOUGHERTY COUNTY SCHOOL SYSTEM, ACTING THROUGH
THE DOUGHERTY COUNTY BOARD OF EDUCATION
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

The Dougherty County School System responds to the petition of the United States Department of Education to review by writ of certiorari the judgment of the United States Court of Appeals for the Fifth Circuit.

ARGUMENT

Review on writ of certiorari should be granted only where there are special and important reasons therefor. Rule 19, Supreme Court Rules. Respondent respectfully submits that no such special and important reasons exist under the facts of this case to justify granting the requested writ.

I. This Court Has Denied Certiorari In Cases Presenting The Same Issue

Petitioner has applied to this Court on other occasions for a writ of certiorari in cases which, while factually different, nevertheless, presented to this Court the identical issue. *Romeo Community Schools* v. *HEW*, 600 F.2d 581 (6th Cir.), *cert. denied*, 444 U.S. 972 (1979); *Islesboro School Committee* v. *Califano*, 593 F.2d 424 (1st Cir.), *cert. denied*, 444 U.S. 972 (1979); *Junior College District of St. Louis* v. *Califano*, 597 F.2d 119 (8th Cir.), *cert. denied*, 444 U.S. 972 (1979). Respondent respectfully submits that there exists no legal issue or factual distinction in the case at bar which would require this Court to reach a contrary result to that of the cases which Petitioner has already attempted to present to this Court through certiorari.

II. There Is No Split Of Authority Between Circuit Courts In Cases That Involve Actual Controversy

There are two other cases pending before this Court which deal with the same regulations which form the basis of the controversy in this case. *North Haven Board of Education* v. *Hufstedler*, Nos. 79-6136, 79-6247, and 79-7747 (2d Cir. July 24, 1980), Supreme Court No. 80-986; *Seattle University* v. *HEW*, No.

77-631S (W.D. Wash. Jan. 3, 1978), aff'd, 621 F.2d 992, petition for cert. granted, No. 80-493 (Dec. 1, 1980).

In the *Seattle* case the attorneys for the university have petitioned this Court for permission to withdraw and have asserted that the issue is now moot. Under the authority presented by Respondent in the *Seattle* case, it appears as though the Petition for leave to withdraw should be granted in that case and that would leave the present action and the *North Haven* case.

The Second Circuit's decision in the *North Haven* case is not a final decision since a timely petition for rehearing has been filed and is pending before the Second Circuit Court of Appeals.

Therefore, no conflict exists between the Court of Appeal at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

C. RICHARD LANGLEY
PERRY, WALTERS,
LIPPITT & CUSTER
Attorneys for Respondent.